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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

KIMBERLY FRANETT-FERGUS, an)	Case No.: 15-cv-00242
individual,)	
)	FIRST AMENDED COMPLAINT
Plaintiff,)	
vs.)	(JURY PREVIOUSLY DEMANDED)
)	
K12 MANAGEMENT INC., a foreign)	
corporation, K12 VIRTUAL)	
SCHOOLS L.L.C., a foreign)	
corporation; and K12 INC., a foreign)	
corporation; K12 WASHINGTON)	
L.L.C., a foreign corporation; OMAK)	
SCHOOL DISTRICT 19, a public)	
school,)	
)	
Defendants.)	

Plaintiff Kimberly Fergus complains and avers as follows:

I. PARTIES, JURISDICTION, AND VENUE

1.1 Status of Plaintiff. Plaintiff Kimberly Franett-Fergus is an individual, who at all times material hereto resided in Washington State.

1.2 Status of Defendant K12 Management Inc. K12 Virtual Schools L.L.C is a wholly owned subsidiary of K12 Inc. formed in the state of Delaware.

1 Upon information and belief, it transacts business in Okanogan County, WA and
2 may have had a role in the employment of, the management of, or decisions
3 related to the job position in question.

4 1.3 Status of Defendant K12 Virtual Schools L.L.C. K12 Virtual
5 Schools L.L.C a wholly owned subsidiary of K12 Inc. formed in the state of
6 Delaware. Upon information and belief, it transacts business in Okanogan County,
7 WA and may have had a role in the employment of, the management of, or
8 decisions related to the job position in question.

9 1.4 Status of Defendant K12 Inc. K12 Inc. is a foreign corporation
10 formed in the state of Delaware. Upon information and belief, it transacts business
11 in Okanogan County, WA. Upon information and belief, it was an employer for
12 the job position in question. Upon further information and belief, it is the parent
13 corporation of the K12 entity that operates as the “Washington Virtual Academy
14 at Omak”.

15 1.5 Status of Defendant K12 Washington L.L.C. K12 Washington
16 L.L.C. is a foreign corporation formed in the state of Delaware. Upon information
17 and belief, it transacts business in Okanogan County, WA. Upon further
18 information and belief, it was an employer for the job position in question.

1 Omak School District. This position was substantially similar to her previous
2 teaching position with Washington Virtual Academies.

3 2.5 Ms. Franett-Fergus interviewed for the position. She was qualified
4 for the job in question. She was the best qualified applicant.

5 2.6 A committee of individuals from more than one of the defendants
6 participated in job interviews and deliberated. The product of that deliberation was
7 unlawful discrimination.

8 2.7 The person hired for the position was less qualified for the job than
9 Ms. Franett-Fergus.

10 2.8 The person hired for the position was apparently of Islamic faith and
11 national origin or race of those consistent with an Arabic or Persian heritage.

12 2.9 Ms. Franett-Fergus is not of Islamic faith and neither Arabic nor
13 Persian.

14 2.10 The group conducting interviews consisted of individuals from both
15 the government and a private entity. The group recommended the government hire
16 the less qualified person based upon illegal criterion/criteria. The government
17 followed that recommendation. These individuals were acting under color of law.

18 2.11 The job position in question has two, joint employers, including the
19 government, and for a position traditionally and in this case exclusively fulfilled
20 by government. The employers are acting under color of state law.

1 2.12 A tort claim against Omak School District was timely and properly
2 presented to its agent more than 60 days prior to commencement of this civil
3 action. The tort claim form and its presentation complies or substantially complies
4 with any legal prerequisite to this civil action.

5 2.13 In the alternative to 2.12, Omak School District failed to comply with
6 RCW 4.96.020 and therefore cannot raise it as a defense.

7 **III. CAUSES OF ACTION**

8 **A. Violation of Washington Law Against Discrimination.**

9 3.1 Ms. Franett-Fergus was a qualified candidate for the position given
10 her past history as an on-line and virtual teacher, as well as her previous
11 employment with Washington Virtual Academy.

12 3.2 Ms. Franett-Fergus was not hired for the position because the
13 defendants improperly awarded the position to a less qualified candidate because
14 of that candidate's religion, race, and/or national origin.

15 3.3 Ms. Franett-Fergus asserts on information and belief that the other
16 candidate was hired due to the candidate's Islamic faith and/or national origin or
17 race.

18 3.4 The actions of the defendants were a violation of the Washington
19 Law Against Discrimination. Plaintiff sustained damages in an amount to be
20 proven at trial.

B. Violation of Title VII - Discrimination.

3.5 Ms. Franett-Fergus was a qualified candidate for the position given her past history as an on-line and virtual teacher, as well as her previous employment with Washington Virtual Academy.

3.6 Ms. Franett-Fergus was not hired for the position because the defendants improperly awarded the position to a less qualified candidate because of that candidate's religion, race, and/or national origin.

3.7 Ms. Franett-Fergus asserts on information and belief that the other candidate was hired due to the candidate's Islamic faith and/or national origin or race.

3.8 The unlawful practices complained of in the above paragraphs were done with malice or with reckless indifference to Plaintiff's rights as protected by federal and state laws.

3.9 The actions of the defendants were a violation of 42 U.S. Code § 2000e et seq. Plaintiff sustained damages in an amount to be proven at trial.

C. Conspiracy and Action in Concert

3.10 Defendants conspired and acted in concert with an unlawful motive or through unlawful means to injure Ms. Franett-Fergus.

D. Conspiracy in Violation of 42 U.S.C. §1985(3)

3.11 Defendants conspired to deprive Ms. Franett-Fergus of employment in violation of 42 U.S.C. §1985(3).

3.12 The purpose of Defendants' conspiracy was to deprive Ms. Franett-Fergus of equal protection afforded to her by law.

3.13 The Defendants' collaborated and conspired to deny Fergus employment in favor of another applicant on the basis of race, religion and/or national origin in violation of Washington State law.

3.14 Ms. Franett-Fergus sustained damages a result of Defendants' conspiracy to deprive her of employment on the basis of race and national origin in an amount to be proved at trial.

D. Violation of 42 U.S.C. § 1981

3.15 Defendants deprived Ms. Franett-Fergus of employment based on impermissible and illegal criteria in violation of 42 U.S.C. § 1981.

3.16 Ms. Franett-Fergus was denied employment by Defendants on the basis of race.

3.17 Defendants hired a less qualified applicant for the purpose of increasing diversity because the other applicant was of Middle Eastern descent and Ms. Franett-Fergus is not.

1 (6) For such other and further relief as the Court may deem just and
2 proper.

3 Dated this 11th day of December, 2015.

4
5 ROCKE | LAW Group, PLLC

6 s/ Aaron V. Roche

7 Aaron V. Roche, WSBA #31525

8 Attorney for Plaintiff

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DECLARATION OF SERVICE

I sent a copy of the foregoing First Amended Complaint to the following in the manner indicated:

Via ECF to:

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on today's date.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct to the best of my belief.

Signed and DATED this 11th day of December, 2015 in Seattle, Washington.

s/ Sarah Borsic
Sarah Borsic, Legal Assistant